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Aspirenxt Sdn Bhd v Nirmlina a/p Amal Das

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-346–06 OF 2022
ROZ MAWAR JC
31 JANUARY 2023

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Tort — Damages — Claim for — Plaintiff claimed against defendant for defamation, intimidation and extortion, harassment, and unlawful interference with trade — Defendant's actions and/or conduct after being terminated by plaintiff — Defendant counterclaimed for salary and payment in lieu of notice of termination and sexual harassment by plaintiff's director — Whether plaintiff had proven that defendant committed defamation, intimidation and extortion, harassment against plaintiff and unlawful interference with plaintiff's trade and/or business — Whether defendant's counterclaim for salary and payment in lieu of notice of termination could succeed — Whether defendant's counterclaim for sexual harassment should be allowed — Whether plaintiff entitled to damages

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The defendant who was employed by the plaintiff as its business development manager, was terminated due to the reasons of unprofessional conduct and failure to adhere to company policies. Upon receipt of the termination letter, the defendant responded that she would challenge it in court. The defendant had then directed an email to the plaintiff's director blaming him for terminating her and added a screenshot picture taken from a video call of a personal call the defendant had with the plaintiff's director ('the video call screenshot'). The defendant also asked for a settlement of RM100,000. There was no reply from the plaintiff's director and the defendant sent out to various parties that included the plaintiff's employees and management and its business partners, vide WhatsApp application and her social media applications and/or platforms, screenshots of: (a) a selective part of the defendant's conversation with the plaintiff's director months earlier that showed only the plaintiff's director's messages without hers that contained profanities and vulgarities; and (b) the video call screenshot. Having received no reply, the defendant pressed by sending out a follow-up email seeking response in 15 minutes. The plaintiff still did not respond and thus the defendant shot out another email. The plaintiff's director then replied to the defendant and asked for her available time for the team to discuss should she want to settle amicably. The defendant replied and sought RM200,000 as settlement. The plaintiff's director responded seeking the defendant's time to hash out the terms of a settlement agreement. The defendant responded stating her terms as per what she had stated. The plaintiff had not given in to any of her demands and the defendant subsequently sent an email to the Ministry of

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Human Resources Malaysia an image of the plaintiff's director with a close-up of a finger that blocked his face labelled 'simbol lucah'. The plaintiff then informed the defendant that it was prepared to pay the defendant's wages in lieu of notice immediately upon the return of its laptop by the defendant, but the defendant refused and asked for the payment prior to its return. The plaintiff's claim against the respondent stemmed from defamation, intimidation and extortion, harassment, and unlawful interference with trade. The relief sought by the plaintiff were: (i) an injunction to restrain the defendant from any further disruption and/or interference and/or harassment of the plaintiff's business activities and/or clients and/or employees and/or affiliates; (ii) an injunction to restrain the defendant from causing further damage to the plaintiff's reputation; and (iii) damages.

Held:

(1) There was nothing in the defendant's statement in the email sent to the Ministry of Human Resources with the attachment of the video call screenshot, giving its plain and ordinary meaning, that imputed any dishonourable or discreditable conduct or motives on the part of the plaintiff. Due to the fact that a company like the plaintiff could not be injured by its feelings, it must be proven on a balance of probabilities that the contended statement had hurt its pocket and/or injured its trade. In totality, the evidence adduced by the plaintiff had not fulfilled the elements of the defamation on a balance of probabilities (see paras 28–29 & 31).

(2) The defendant had meant to threaten the plaintiff's director with the exposure should she not get her way although she was already doing it as she had blasted the screenshots of the selected WhatsApp messages from him and the video-call screenshot to numerous groups chats and her social media platforms. Although the defendant had the intention to threaten and intimidate the plaintiff's director and may have even carried out her threats to a certain extent, the plaintiff was not intimidated. No evidence of the plaintiff having cowered to the intimidation of the defendant. The plaintiff was not of lesser power to be intimidated by the defendant (see paras 33 & 37–38).

(3) The defendant's repeated acts of sending persistent emails and the dissemination of numerous screenshots of the selected WhatsApp messages from the plaintiff's director and the video call screenshot to numerous groups chats and her social media platforms, all mounted to that definition of tort of intentional harassment. It had served to distress and annoy the plaintiff's business and caused the plaintiff hardship and extra costs. Thus, the defendant had committed the tort of harassment onto the plaintiff. The defendant was directed to take down all such posts from her social media platforms and she was prohibited from further

circulating or re-circulating the screenshot of the selected WhatsApp messages and the video call screenshot (see paras 43–45).

(4) It was the defendant's intention to injure the plaintiff vis a vis its director and hence there was an intention on the part of the defendant. However, the plaintiff had failed to satisfy that her conduct although harassment, amounted to actual interference with its trade or business. The plaintiff did not prove on a balance of probabilities that an injury had occurred to its trade (see paras 47–48).

(5) The defendant was entitled to her salary and the payment in lieu of notice of termination. However, she had yet to return all of the plaintiff's assets which were still in her possession. The payment would be settled upon the return of the plaintiff's assets and hence, the defendant's counterclaim could not succeed (see para 49).

(6) There were no complaints to the plaintiff on the alleged sexual harassment. Even after the receipt of the termination of the defendant's employment, she did not inform the plaintiff's human resources manager of all the allegations that she was now claiming. The defendant's language in her communications was filled with profanities with constant and repeated usage of disgraceful terms and the plaintiff's director likewise seemed to respond in such a manner too. Their relationship was consensual. The matter seemed to have been on a personal level. It was unprofessional, particularly on the part of the plaintiff's director but on a balance of probabilities it did not seem to equate sexual harassment on the part of the plaintiff's director. Further, there was an absence of any medical report to show signs or consequences of the defendant having been through traumatic episode. There was no evidence to corroborate her claims of mental stress, insomnia, depressive disorders and anxiety as a result of the plaintiff's director's alleged sexual harassment. In the circumstances, the defendant's counterclaim for sexual harassment against the plaintiff was dismissed. On her claim for loss of earnings — evidence showed that the defendant was ready to resign and did not want to stay with the plaintiff. The defendant was evasive, inconsistent, and sometimes flippant. On a balance of probabilities, she had not succeeded in proving her claim for loss of earnings (see paras 66 & 70–74).

(7) The sum of RM100,000 for damages sought by the plaintiff was rather unreasonable given that the defendant's actions of harassment were contained to the incidents following the termination of her employment. Thus, the damages for the tort of harassment committed by the defendant was awarded in the sum of RM20,000 (see para 75).

[Bahasa Malaysia summary

Defendan yang bekerja untuk plaintif sebagai pengurus pembangunan perniagaan, telah diberhentikan dengan sebab kelakuan tidak profesional dan

kegagalan mematuhi polisi syarikat. Setelah menerima surat pemberhentian, defendan menjawab bahawa dia akan mencabarnya di mahkamah. Defendan kemudian menghantar email kepada pengarah plaintif dengan menyalahkannya kerana memberhentikan dia dan menyertakan tangkapan layar yang diambil dari panggilan video perbualan peribadi defendan dengan pengarah plaintif ('tangkapan layar panggilan video'). Defendan juga meminta penyelesaian sebanyak RM100,000. Tiada balasan daripada pengarah plaintif dan defendan menghantar tangkapan layar perbualannya dengan pengarah plaintif kepada pelbagai pihak termasuk kakitangan dan pengurusan plaintif serta rakan perniagaannya, melalui aplikasi WhatsApp dan aplikasi media sosialnya dan/atau platformnya, yang mengandungi: (a) sebahagian perbualan defendan dengan pengarah plaintif beberapa bulan sebelumnya yang hanya menunjukkan mesej pengarah plaintif tanpa mesej defendan yang mengandungi perkataan kesat dan lucah; dan (b) tangkapan layar panggilan video tersebut. Selepas tiada balasan, defendan meneruskan dengan menghantar email susulan meminta balasan dalam masa 15 minit. Plaintif masih tidak membalas dan defendan menghantar email lagi. Pengarah plaintif kemudian membalas defendan dan meminta masa yang sesuai untuk berbincang secara aman. Defendan membalas dan meminta RM200,000 sebagai penyelesaian. Pengarah plaintif meminta masa defendan untuk merangka terma perjanjian penyelesaian. Defendan membalas dengan menyatakan terma yang telah dimintanya. Plaintif tidak memenuhi sebarang permintaan defendan dan defendan kemudiannya menghantar email kepada Kementerian Sumber Manusia Malaysia dengan imej pengarah plaintif dengan tangkap dekat jari yang menutup wajahnya yang diberi label 'simbol lucah'. Plaintif kemudian memaklumkan kepada defendan bahawa mereka bersedia membayar gaji defendan sebagai ganti notis sejurus selepas pemulangan laptop syarikat, tetapi defendan menolak dan meminta bayaran sebelum pemulangan. Tuntutan plaintif terhadap defendan berpunca daripada fitnah, intimidasi dan pemerasan, gangguan, dan campur tangan tidak sah dengan perdagangan. Relif yang dipohon oleh plaintif adalah: (i) injunksi untuk menghalang defendan daripada sebarang gangguan dan/atau campur tangan dan/atau gangguan terhadap aktiviti perniagaan plaintif dan/atau pelanggan dan/atau kakitangan dan/atau gabungan; (ii) injunksi untuk menghalang defendan daripada menyebabkan kerosakan lanjut terhadap reputasi plaintif; dan (iii) ganti rugi.

Diputuskan:

(1) Tiada apa-apa dalam kenyataan defendan dalam email yang dihantar kepada Kementerian Sumber Manusia dengan lampiran tangkapan layar panggilan video itu yang memberi makna biasa dan jelas yang menyatakan kelakuan atau motif yang tidak beretika atau tidak boleh dipercayai di pihak plaintif. Oleh kerana syarikat seperti plaintif tidak boleh dilukai oleh perasaannya, ia perlu dibuktikan pada imbangan

kebarangkalian bahawa kenyataan yang dipertikaikan itu telah merugikannya dan/atau merosakkan perniagaannya. Secara keseluruhannya, keterangan yang dibawa oleh plaintif tidak memenuhi unsur fitnah pada imbangan kebarangkalian (lihat perenggan 28–29 & 31).

(2) Defendan berniat mengancam pengarah plaintif dengan pendedahan jika dia tidak mendapat kehendaknya walaupun dia sudah melakukannya dengan menyebarkan tangkapan layar mesej WhatsApp terpilih daripadanya dan tangkapan layar panggilan video kepada banyak kumpulan bual dan media sosialnya. Walaupun defendan mempunyai niat untuk mengancam dan menakut-nakutkan pengarah plaintif dan mungkin telah melaksanakan ancamannya sehingga ke tahap tertentu, plaintif tidak merasa terancam. Tiada keterangan plaintif terkesan oleh intimidasi defendan. Plaintif tidak berada dalam kedudukan kuasa yang lebih rendah sehingga boleh diintimidasi oleh defendan (lihat perenggan 33 & 37–38).

(3) Tindakan berulang defendan menghantar email yang berterusan dan menyebarkan banyak tangkapan layar mesej WhatsApp terpilih dari pengarah plaintif dan tangkapan layar panggilan video ke banyak kumpulan bual dan media sosialnya, semuanya adalah dalam definisi tort gangguan yang sengaja. Ini menyebabkan gangguan dan menyusahkan perniagaan plaintif serta menyebabkan kesukaran dan kos tambahan terhadap plaintif. Oleh itu, defendan telah melakukan tort gangguan terhadap plaintif. Defendan diarahkan untuk mengeluarkan semua pos tersebut dari media sosialnya dan dilarang daripada menyebarkan atau mengedarkan semula tangkapan layar mesej WhatsApp terpilih dan tangkapan layar panggilan video (lihat perenggan 43–45).

(4) Adalah niat defendan untuk mencederakan plaintif vis a vis pengarahnya dan oleh itu terdapat niat di pihak defendan. Namun, plaintif gagal membuktikan bahawa kelakuannya walaupun gangguan, bersamaan dengan gangguan sebenar terhadap perniagaan atau perdagangan mereka. Plaintif tidak membuktikan pada imbangan kebarangkalian bahawa kecederaan telah berlaku kepada perdagangan mereka (lihat perenggan 47–48).

(5) Defendan berhak menerima gajinya dan bayaran ganti notis pemberhentian. Walau bagaimanapun, dia belum mengembalikan semua aset plaintif yang masih dalam miliknya. Bayaran akan diselesaikan setelah pengembalian aset plaintif dan oleh itu, tuntutan balas defendan tidak boleh berjaya (lihat perenggan 49).

(6) Tiada aduan kepada plaintif mengenai dakwaan gangguan seksual. Malah selepas menerima pemberhentian kerja defendan, dia tidak memaklumkan pengurus sumber manusia plaintif mengenai semua

dakwaan yang kini dia tuntut. Bahasa defendan dalam komunikasinya penuh dengan perkataan kesat dengan penggunaan istilah-istilah yang memalukan secara berulang-ulang dan pengarah plaintif juga kelihatan membalas dengan cara yang sama. Hubungan antara mereka adalah berdasarkan persetujuan. Perkara ini kelihatan bersifat peribadi. Ia tidak profesional, terutamanya di pihak pengarah plaintif tetapi pada imbangan kebarangkalian ia tidak kelihatan seperti gangguan seksual di pihak pengarah plaintif. Tambahan lagi, tiada laporan perubatan menunjukkan tanda-tanda atau akibat defendan telah melalui episod traumatik. Tiada keterangan untuk menyokong dakwaannya mengenai tekanan mental, insomnia, gangguan kemurungan dan kebimbangan akibat dakwaan gangguan seksual oleh pengarah plaintif. Dalam keadaan ini, tuntutan balas defendan terhadap gangguan seksual ke atas plaintif ditolak. Mengenai tuntutannya untuk kehilangan pendapatan — keterangan menunjukkan bahawa defendan bersedia untuk berhenti kerja dan tidak mahu terus bekerja dengan plaintif. Defendan bersikap mengelak, tidak konsisten, dan kadang-kadang remeh. Pada imbangan kebarangkalian, dia tidak berjaya membuktikan tuntutannya untuk kehilangan pendapatan (lihat perenggan 66 & 70–74).

(7) Jumlah RM100,000 bagi ganti rugi yang diminta oleh plaintif agak tidak munasabah memandangkan tindakan gangguan defendan terhad kepada insiden-insiden selepas pemberhentiannya. Oleh itu, ganti rugi bagi tort gangguan yang dilakukan oleh defendan diberikan sebanyak RM20,000 (lihat perenggan 75).]

Cases referred to

Chok Foo Choo @ Chok Kee Lian v The China Press Bhd [1999] 1 MLJ 371, CA (refd)

Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor [2021] 2 MLJ 577, FC (refd)

Harry Wong Wei Chen v Petroliam Nasional Bhd (Petronas) [2021] ILJU 2, IC (refd)

Leo Pharmaceutical Products Ltd A/S (Lovens kemiske Fabrik Produktionsaktieselskab) v Kotra Pharma (M) Sdn Bhd [2009] 5 MLJ 703, HC (refd)

Mak Khuin Weng v Melawangi Sdn Bhd [2016] 5 MLJ 314; [2016] 8 CLJ 831, CA (refd)

Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta [2001] 4 SLR 454; [2001] 3 SLR (R) 379, HC (refd)

Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor [2016] 4 MLJ 282, FC (refd)

Morgan v Fry [1968] 2 QB 710, CA (refd)

Rookes v Barnard [1964] AC 1129, HL (refd)

Sarawak Energy Berhad & Anor v Peter Kallang & Ors [2016] MLJU 775, HC (refd)
Shahrin Abdul Mutalib v Worldwide Fund for Nature Malaysia [2019] 2 LNS 2233, IC (refd)
Sitt Tatt Berhad v Flora a/p Gnanapragasam & Anor [2006] 1 MLJ 497, HC (refd)
Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor [1979] 2 MLJ 56 (refd)

Legislation referred to

Employment Act 1955 s 2, Part XVA
Industrial Relations Act 1967 ss 20(3), 54, 54(1)

Mohd Rezan Ezra Muhammad Mosinal (with Nandakumar S Haridas and Chris Lam) (Thomas Phillip) for the plaintiff.
Valerie Sya Kit Yin (with Angelie Low Lu-Yen and Patricia Louis a/p Ronald Louis) (Wong & Lu-Yen Partnership) for the defendant.

Roz Mawar JC:

[1] Like the dramas ever so popular on the screen, this suit where the employer sought the aid of the law for redress of defamation and interference of its trade by a former employee, is laced with alleged sexual harassment. The employer plaintiff's claim against the respondent (a former employee) stems from defamation, intimidation and extortion, harassment, and unlawful interference with trade. The reliefs sought by the plaintiff are:

(a) an injunction to restrain the defendant from any further disruption and/or interference and/or harassment of the plaintiff's business activities and/or clients and/or employees and/or affiliates;

(b) an injunction to restrain the defendant from causing further damage to the plaintiff's reputation; and

(c) damages against the defendant as a result of her defamation, intimidation, harassment and unlawful interference with trade against the plaintiff.

[2] On its way to trial which was held for two days (14 August 2023 and 15 August 2023) via hybrid as the plaintiff's witnesses were stationed in Singapore and the United Kingdom, the plaintiff had sought for an interim injunction. It was allowed by this court only as to restrain the defendant from communicating, disclosing, discussing and/or disseminating any and all communication and/or information relating to the plaintiff or any of the plaintiff's employees and or directors that the defendant had obtained and/or was part of an/or was privy to throughout the defendant's employment by the

plaintiff with the exception for the purpose of filing and/or deposing affidavits required thereto for the purposes of this suit and the complaint filed at the Department of Industrial Relations, until the disposal of the suit.

[3] An additional interim order was to restrain the defendant from contacting and/or communicating with the plaintiff's customers and/or business partners and/or the plaintiff's employees with regards to any of the plaintiff's affairs, including any matters relating to the plaintiff's directors and/or the plaintiff's employees with the exception for the purpose of filing and/or deposing affidavits required thereto for the purposes of this suit and the complaint filed at the Department of Industrial Relations, until the disposal of the suit. A search or application for copies of the cause papers to this suit by non-parties may only be allowed with the consent of this court.

[4] The plaintiff (an information technology solutions provider) employed the defendant on 31 March 2021 as its Business Development Manager. She was terminated on 20 June 2022. According to the plaintiff, the reasons were that the defendant's conduct was unprofessional, and she had failed to adhere to company policies. The reasons were stated as follows:

> – Multiple unprofessional and abusive behavior towards colleagues, manager on various platforms even after it was communicated to you to comply to the professional conduct and communication in the organization.
>
> – Failure to adhere to company processes (Failed to clock in & out on daily time attendance).

[5] Whether such conduct on the part of the defendant was true or the termination was justified, is not before this court as it is handled by the Labour Office. The cause of action before this court stemmed from the defendant's conduct pursuant to the letter of termination. Thus, at best the evidence related to why she was terminated shows the propensity of her actions and/or conduct for this court's deliberation on the events that took place consequent to the defendant's termination. This court took note of the basis of the defendant's termination as testified by the plaintiff's two witnesses (PW1 oversees the sale and operations of the plaintiff in Malaysia who was the defendant's supervisor, and the plaintiff's director). Evidence adduced was that in the plaintiff's view, the defendant's unprofessional and abusive behaviour toward her colleagues occurred regularly and on various platforms even after several warnings and/or notifications. Emails, messages on Teams application and WhatsApp applications have formed the evidence that corroborated the plaintiff's contention.

[6] Upon receipt of the termination letter on 20 June 2022, the defendant had responded to the plaintiff's Human Resources Manager via email that she

would challenge it in court. She had stated:

> I disagree with the content of your letter and if you are a qualified HR (which I was informed that you are not by Tony) I'm sure you would know that you are to provide a show cause letter prior to dismissing anyone for disciplinary reason.

[7] The 'Tony' that she had referred to is the plaintiff's director who testified as its second witness. The defendant had then directed an email to him blaming him for terminating her. This email was copied to PW1. The time stamp of the email is 8:01:24 AM. She had added a screenshot picture taken from a video call of a personal call the defendant had with the plaintiff's director (the videocall screenshot). The photo is of a finger in the foreground that seems to be the plaintiff's director and his face can be seen in the background almost covered by the finger. She stated:

> Further to my earlier email, not only disagree to Ariels letter I would also like to add the pic as part of this discussion.
>
> Now without prejudice to my claim on the unlawful termination by AspireNXT to the Industrial Court and my right to be reinstated and without admitting to any fault, I would like to ask for a settlement of RM100,000.00 so AspireNXT and me could depart peacefully.
>
> I'll wait for your reply?

[8] There was no reply from the plaintiff's director who had forwarded the matter to the plaintiff's Human Resources Manager to handle. The defendant then emailed to inform that Merchantrade was choosing AspireNXT and she wanted good commission as she understood that the project was huge. She had also attached an item to the email which she stated: 'Also, please see attached, this is an insult?'.

[9] In the meantime, the defendant had sent out a series of screenshots to various parties that included the plaintiff's employees and management, its business partners. There is evidence where she had sent them to multiple third parties outside of the plaintiff. They were made vide WhatsApp application and her social media applications and/or platforms. The screenshots were:

(a) a selective part of the defendant's conversation with the plaintiff's director months earlier (22 April 2022 to 10 May 2022) that showed only the plaintiff's director's messages without hers. The plaintiff's director's messages contained profanities and vulgarities; and

(b) the video call screenshot.

[10] In response to that the plaintiff had removed her from the chat groups and blocked her. The plaintiff's business partners were informed that the

defendant had been terminated from its employment as of 20 June 2022 and was no longer representing it.

[11] Back to the email communications, having received no reply, the defendant pressed by sending out a follow-up email seeking response in fifteen minutes. She stated that she would inform Merchantrade of the current situation as her discussions with them were scheduled that day. The plaintiff had not responded via email. So, she shot out another email to the plaintiff's director and PW1, and copied to the Human Resources Manager which she stated:

> I see that there is no reply from AspireNXT which I take it as AspireNXT has no intention to settle this amicably. I will then do the needful on my side.
>
> I honestly believe in good faith that all the staffs at the Aspire NXT should be warned about you Tony.
>
> Since some of them has blocked me on WhatsApp maybe a Linkedln status update would have better reach. @Mahesh_K, please do like my post and reshare it. Thanks.

[12] The plaintiff's director then replied to the defendant and had put on record that they had tried to contact her to settle her grouses amicably although her actions showed an opposite intention. He asked for her available time for the team to discuss should she want to settle amicably. He wrote:

> You continuing to threaten me and my company is not in the right direction for a person looking at monetary benefit for termination. So as mentioned above please let us know a time and date of your availability and we will fix a meeting to settle. Thanks.

[13] The defendant replied (copied to PW1 and the plaintiff's Human Resources Manager) and sought RM200,000 as settlement in exchange for peace, in her words 'this is my last settlement offer of RM200k (not taxable) non-negotiable, to be confirmed by end of tonight (MY time), in exchange of our peace. I can write the settlement agreement to include your right to be protected, you can very well add your terms into the agreement'. She stated her reason for the increment of her settlement was because the plaintiff's business partners were notified that she had been terminated. She had also put on record:

i) If I share anything about you to the public, I'm only going to tell you the truth. No caption needed just screenshots.

ii) Again as I said, I don't have to speak, I can just show. And what I show is something the people should know for their own benefit.

iii) So do you want to settle or you don't want to settle?

[14] The plaintiff's director responded seeking the defendant's time to hash out the terms of a settlement agreement. The defendant responded stating her terms as per what she had stated. She further wrote:

> Once I go to the IR, you do know I would need to bring whatever I have against you and the company to protect myself. By then, it'll be too late.
>
> I'll be at the IR at 9am tomorrow. Hence I want confirmation of our terms to settle by end of tonight MY time.

[15] The plaintiff then informed the defendant vide email that a law firm has been appointed to assist in an amicable resolution. The defendant replied and copied her email to various employees of the plaintiff that she wanted to settle it that day itself. She had also greeted the lawyer appointed with reference of being acquainted with him earlier in her life.

[16] PW1 lodged a police report the next day on 21 June 2022 to alert the authorities on the possible offence of extortion. The police report contained the defendant's demand for RM100,000 and the increased amount of RM200,000. The plaintiff contended that the day after on 22 June 2022 the defendant increased her offer of settlement to RM250,000. Lastly on 23 June 2022 the plaintiff claimed that the defendant demanded RM350,000 and that she had threatened to disclose confidential matters about the plaintiff unless she was paid. All these were not cross-examined by the defendant.

[17] The defendant had also copied an email to the wife of the plaintiff's director on 23 June 2022 and an email on 22 June 2022. These facts were not cross-examined.

[18] She had alleged numerous misbehaviours against the plaintiff's director. The plaintiff had not given in to any of her demands. This was communicated to her on 22 June 2022 through the plaintiff's lawyers.

[19] Then on 7 July 2022 she sent an email to the Ministry of Human Resources Malaysia an image of the plaintiff's director with a close-up of a finger that blocked his face labelled 'simbol lucah'. She had requested that it be forwarded to the Ministry of Human Resources.

[20] In spite of the ex parte interim injunction order of 14 July 2022, the defendant on 22 July 2022 sent an email to the plaintiff's director which she had copied to the Companies Commission Malaysia that attached the said email and image she had sent to the Ministry of Human Resources. The plaintiff's laptop remains in the defendant's possession. On 3 August 2022 the plaintiff informed the defendant that it was prepared to pay the defendant's wages in lieu of notice immediately upon the return of its laptop by the

defendant. But the defendant refused, asking for the payment prior to its return. The defendant as at trial was employed by a business partner of the plaintiff.

[21] All those facts were agreed to and confirmed at trial. To be determined by this court is whether the plaintiff had proven on a balance of probabilities that the defendant had indeed committed defamation, the tort of intimidation, extortion, harassment against the plaintiff and had unlawfully interfered with the plaintiff's trade and/or business. Additionally, this court also is to determine the defendant's counterclaim. She had claimed that the plaintiff had failed to pay her the salary and the amount in lieu of notice of termination together with commission due to her. A rather more serious claim is her allegation for sexual harassment by the plaintiff's director without protection from the plaintiff as employer, and as a result the defendant had experienced depression, insomnia, depressive and anxiety disorder. The defendant had also alleged she was placed under unreasonable pressure to execute her workload and additionally for loss of earning. This court if it finds for the defendant on all her counterclaims, is to determine the amount of damages to be awarded thereto.

[22] Assessment by this court includes the consideration of the evidence adduced by the plaintiff through the testimonies of its manager and director, and testimony of the defendant. Their demeanour and candour are also regarded. The defendant submitted that her email to the Ministry of Human Relations on 7 July 2022 that contained the screenshot of the plaintiff's director must be disregarded by this court as it is expressly prohibited by s 54 Industrial Relations Act 1967 ('the IRA') which states:

> (1) Where a trade dispute relates to matters as to which negotiation or conciliation proceedings have taken place under this Act, no evidence shall be given in the proceedings before the Court as to such negotiation or conciliation proceedings other than a written statemen in relation thereto agreed to and signed by the parties to the dispute.
>
> (2) In a proceeding before the Court on a reference to the Court under subsection 20(3), no evidence shall be given of any proceeding before the Director General under subsection 20(2) other than a written statement in relation thereto agreed to and signed by the parties to the reference.
>
> (3) No evidence shall be given in proceedings before the Court with regard to any offer relating to any matter connected with the trade dispute made without prejudice by any person or trade union except with the consent of that person or trade union.

[23] This court does not agree with the contention of the defendant as this is not a trade dispute as referred to in s 54(1) of the IRA. Neither is this action a reference under s 20(3) of the IRA nor is it a proceeding regarding any offer

relating to any matter connected with the trade dispute. This is a claim for defamation, tort of intimidation and harassment (that includes a sexual nature contended by the defendant) and unlawful interference to the plaintiff's trade. So, this court will regard all the evidence adduced at trial to deliberate the plaintiff's case against the defendant, and the defendant's counterclaim.

DEFAMATION AGAINST THE PLAINTIFF

[24] As cited by the plaintiff, the elements of defamation as upheld by the Federal Court in *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577 at para 19 on p 590 of the judgment — 'In order to prove a claim in defamation, it is also essential that the offending words are not only defamatory and that they are published but also that they identify the plaintiff as the person defamed'.

[25] The plaintiff's case against the defendant in contending defamation was the screenshots sent by the defendant to numerous employees, business partners and clients of the plaintiff, and also third parties. They consisted of a selective part of the defendant's WhatsApp application communication from 22 April 2022 to 10 May 2022 (WhatsApp screenshot) and from a video call taken from a personal call the defendant had with the plaintiff's director (the video call screenshot).

[26] What is evident and cannot be disputed is that there were no statements made by the defendant that accompanied all those screenshots that she had sent. The Federal Court case of *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1979] 2 MLJ 56 referred to by the plaintiff held at p 58 that:

> Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime, dishonesty ingratitude or cruelty.

[27] There must first and foremost be a statement before this court can assess whether that statement is indeed defamatory against the plaintiff. The deliberation of the words used is required to conclude whether they assault the plaintiff's business reputation, image and good name that affected its business. There is an absence of any statements in the screenshots that she had sent. The Court of Appeal's decision in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 that the plaintiff referred to in imploring this court to apply the test of giving the words published in their natural and ordinary meaning cannot be applied here for the lack of any statement by the defendant.

[28] The email the defendant sent to the Ministry of Human Resources on 7 July 2022 with the attachment of the video call screenshot bore the following statement:

> Ingin saya keplkan kembali screenshot Tony Matthews, pengarah Syarikat majikan yang dengan bangganya meunjukkan symbol lucah yang saya pohon supaya pihak Tuan tonjolkan ke Ministry of Human Resource.

[29] In this court's considered view, there is nothing in the defendant's accompanying statement, giving its plain and ordinary meaning, that imputes any dishonourable or discreditable conduct or motives on the part of the plaintiff. To the common and reasonable reader, curiosity may be raised to how the video call screenshot came about but nothing negative casted onto the plaintiff. At most, the statement was meant to cast raised eyebrows towards the plaintiff's director, not the plaintiff. See *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor*.

[30] Furthermore, the Court of Appeal held in *Mak Khuin Weng v Melawangi Sdn Bhd* [2016] 5 MLJ 314; [2016] 8 CLJ 831 that for limited companies to prove defamation was done unto it, the task of proving is more onerous:

> For a limited company to succeed in libel, it must plead and prove the words complained of injuriously affect the company. It was not sufficient to rely on an innuendo when the complaint of misconduct was clearly related to the staff of the respondent. Innuendo plays a lesser role in defamation suit filed by a limited company when the burden of proof rests with the plaintiff to prove it injuriously affect them.

[31] Due to the fact that a company like the plaintiff could not be injured by its feelings, it must be proven on a balance of probabilities that the contended statement had hurt its pocket and/or injured its trade. This court had also considered whether the plaintiff's director can be equated to or is one and the same as the plaintiff. There is evidence that the plaintiff's director is a designated representative of the plaintiff with its significant partners and customers. He represents the plaintiff in all its official business meetings and deals. But that cannot be said that the plaintiff's director is the plaintiff. In totality, the evidence adduced by the plaintiff has not fulfilled the elements of the defamation on a balance of probabilities.

INTIMIDATION

[32] In its submissions that the defendant had committed the tort of intimidation, the plaintiff cursorily mentioned the principles established by the House of Lords in *Rookes v Barnard* [1964] AC 1129. A read through of the case is on the tort of intimidation in England and Wales. The High Court had

found that there were unlawful acts committed that constituted intimidation and were actionable in tort as they had harmed the appellant. That decision was reversed by the Court of Appeal as although it concurred that tort of intimidation existed it did not cover the case of a threat to break a contract. At p 1136 the House of Lords held:

> The tort of intimidation is in essence the unlawful procurement of harm through the action of an intermediary. Its existence is well accepted and the only issue is its extent. Lord Watson in *Allen v Flood* defined the tort as having two branches: one where a person induces an intermediary to do something unlawful vis a vis the plaintiff; the other, where the intermediary is induced by unlawful means to do something which, although not unlawful qua the plaintiff, is to his detriment, *Lumley v Gye*, the basis of which was that a breach of contract is a civil wrong, is cited as authority Since the two branches stem from the same root, it would be strange if the breach of contract were unlawful upon one branch but not unlawful upon the other.
>
> Prima facie it is an unlawful act to break a contract, therefore it is an unlawful, and so a tortious act to procure a person to break his contract, and if damages flow from that tortious act he can recover: *Lumley v Gye*. To say that a breach of contract is an unlawful act when it is procured but not an unlawful act when it is threatened is an impossible distinction. The essence of a threat is that the threatener or another person will do something or refrain from doing something which will or may result in harm to the person threatened. The effect on the mind of the threatened party is the relevant matter. A threat of a breach of contract may be far greater effect than a threat of violence, or of trespass to land or slander. In some cases the same threatened act may involve both a breach of contract and a tort, as, for example, where a threatened breach of contract involves detinue of conversion. It would be odd if the tortious characteristic gave rights to a third party, but not the breach of contract.

[33] In this suit, it was not so much a breach of contract that the plaintiff complained of but the statements from the defendant that sought moneys from RM100,000 to RM350,000 to depart peacefully or in exchange for peace. The plaintiff submitted that based on what the defendant had stated, she would exploit confidential matters relating to personal matters between the defendant and the plaintiff's director to third parties, including to the wife of the plaintiff's director. The defendant testified that she had stated all those to pressure a reply from the plaintiff's director for reasons for the termination and when they were going to pay her salary. On the totality of the evidence, this court cannot accept that as the reasons were already stated in the letter of termination dated 20 June 2022 and also through numerous communications. The payment was undertaken by the plaintiff to be paid to the defendant upon her return of the plaintiff's property. This court concludes that in her mind, she had meant to threaten the plaintiff's director with the exposure should she not get her way although she was already doing it as she had blasted the screenshots of the selected WhatsApp messages from him and the video-call screenshot to numerous groups chats and her social media platforms.

[34] The plaintiff submitted that the threat need not be executed, as iterated by Lord Devlin in *Rookes v Barnard* at p 1209 though in this suit the plaintiff relies on all the communications that the defendant had disseminated (an agreed fact):

> What is material to C's cause of action is the threat and B's submission to it. Whether the threat is executed or not is in law quite immaterial. In fact it is no doubt material because if it is executed (whether it be an assault or a breach of contract) it presumably means that B has not complied with it; and if B had not complied with it, C is not injured; and if C is not injured, he has no cause of action.

[35] The plaintiff cited *Morgan v Fry* [1968] 2 QB 710 which it submitted the elements was applied in:

> a threat by one person to use unlawful means, eg violence or a tort or a breach of contract, so as to compel another to obey his wishes and the person so threatened must comply with the demand rather than risk the threat being carried out.

[36] Reference closer to home was made by the plaintiff with the citation of *Sarawak Energy Berhad & Anor v Peter Kallang & Ors* [2016] MLJU 775. The High Court found that the defendants had committed the tort of intimidation with their unlawful actions that resulted in the plaintiff's and their agents being forced to leave the main camp, storage area, boreholes sites, leave behind their machineries and supplies etc and ceased or suspend the works.

[37] Applying to the facts herein, this court finds that although the defendant had the intention to threaten and intimidate the plaintiff's director and may have even carried out her threats to a certain extent, the plaintiff was not intimidated. This is the finding with clear distinction of the plaintiff and the plaintiff's director in mind. The plaintiff had informed its business partners and/or clients. It had hired a lawyer to handle the defendant's demands pursuant to the termination. It had not bent to the threats. No evidence of the plaintiff having cowered to the intimidation of the defendant. It had not paid a single cent of the amount demanded by the defendant.

[38] The plaintiff's director seemed to show signs of having considered the defendant's threat or intimidation seriously. Undoubtedly as it was his messages and his face that the defendant had threatened to expose that invited questions as to his behaviour. He seemed to be the driving force behind the plaintiff to firstly offer the open-door policy for negotiation to settle the matter amicably, and secondly to appoint and entrust the matter to the professional hands of its lawyers. Again, it is stressed here that this court does not find that the plaintiff was intimidated by the defendant's threats as the plaintiff was not of lesser power to be intimidated by the defendant. Unless, the role is the other way around.

[39] The defendant submitted that it was rather mischievous of the plaintiff to pursue this tort of harassment when it was apparent that the facts did not fulfill the elements. The only answer could be that the plaintiff had equated itself to the plaintiff's director. This court does not make such a finding. They are separate entities and the plaintiff's director was at liberty to pursue this under his own name but had not.

TORT OF HARASSMENT

[40] The defendant stressed that a corporation cannot be harassed. It was her submission that as per the law of defamation, a company like the plaintiff cannot have its feelings injured. It needed to show that there has been an injury to its trading reputation. The defendant submitted that as the plaintiff has no capacity to feel fear or distress and as such implored this court that the claim for tort of harassment must fail.

[41] The Federal Court in *Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor* [2016] 4 MLJ 282 gallantly decided at para 38:

> After mulling over the matter, we arrived at a decision to undertake some judicial activism exercise and decide that it is timely to import the tort of harassment into our legal and judicial system, with sexual harassment being part of it.

[42] In its consideration, the Federal Court acknowledges the persuasiveness of the decisions in the English courts as the tort laws here are still very much based on the English common law principles. There, several statutes were passed for offenses of harassment that crystalised with certainty the legal position. Otherwise, the common law had to be developed with the need to overcome the requirement relating to property and proprietary interest. So, the Federal Court referred to a Singaporean case of *Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta* [2001] 4 SLR 454; [2001] 3 SLR (R) 379 where the facts of the case justified the introduction of a new tort of intentional harassment. The plaintiff in that case who had been harassed and pestered by the defendant at his workplace could not sue for trespass or private nuisance. There was no physical contact or bodily harm. The plaintiff had not suffered any psychiatric illness. But the Singapore High Court defined harassment to mean:

> ... a course of conduct by a person, whether by words or action, directly or through third parties, sufficiently repetitive in nature as would case, and which he ought reasonably to know would cause, worry, emotional distress or annoyance to another person.

[43] This court considered the defendant's repeated acts of sending persistent emails and the dissemination of numerous screenshots of the selected WhatsApp messages from the plaintiff's director and the video call screenshot

to numerous groups chats and her social media platforms. They were sent out to the plaintiff's employees and business partners. The copying of emails to the plaintiff's other employees who were not related or not involved in the defendant's termination of employment and the family member of the plaintiff's director taken together with the blast from her WhatsApp application and her publication on her social media platform, all mounted to that definition of tort of intentional harassment.

[44] It had served to distress and annoy the plaintiff's business. The plaintiff had to explain to its business partners and employees. It caused the plaintiff hardship and extra costs by having to engage a law firm to handle the matter. Emails had to be sent out to the plaintiff's clients and business partners to disassociate themselves. All clients were contacted via telephone calls to apologize for the defendant's behaviour. A police report was also lodged that showed the plaintiff's alarm at the harassment which had a direct bearing on its trade reputation. With the initiation of court proceedings, the plaintiff endures costs and allocation of time and resources as a result of the defendant's harassment. These facts were not challenged. On a balance of probabilities, this court concludes that the defendant had committed the tort of harassment onto the plaintiff.

[45] The argument by the defendant that the blast of the selected WhatsApp messages from the plaintiff's director and the video call screenshot to all the plaintiff's business partners contained no messages or written statement from her is untenable to defend against the tort of harassment as it was clearly and certainly they were from her. She was also conscious to disseminate them on a large scale. As to the defendant's contention that the emails and communications on settlement were a negotiation via a two-way conversation, this court is not inclined to agree to it. Her tone in the emails were not an invitation to an open discussion. The words she had employed were laced with sarcasm and threat albeit unto the plaintiff's director. Nonetheless, the messages via WhatsApp applications and her posts on her social media platforms are the ones this court is satisfied that tantamount to harassment. For that, damages will be calculated accordingly below. The defendant is directed to take down all such posts from her social media platforms and she is prohibited from further circulating or re-circulating the screenshot of the said selected WhatsApp messages and the videocall screenshot.

UNLAWFUL INTERFERENCE WITH TRADE

[46] The plaintiff set out the elements as per *Leo Pharmaceutical Products Ltd A/S (Lovens kemiske Fabrik Produktionsaktieselskab) v Kotra Pharma (M) Sdn Bhd* [2009] 5 MLJ 703:

(a) an interference with the trade or business;

(b) had used unlawful means;

(c) the intention was to injure; and

(d) injury occurred.

[47] Evidence show that it was the defendant's intention to injure the plaintiff vis a vis its director. She had intended and calculated her conduct and acts of harassment but forwarded the selected WhatsApp messages from the plaintiff's director and the video call screenshot to all the plaintiff's business partners, out of context. The explanation by the plaintiff's director on them is deliberated when determining whether the defendant had successfully proven her claim for sexual harassment. For this tort of unlawful interference with the plaintiff's trade, this court is satisfied that there was an intention on the part of the defendant. However, the plaintiff had failed to satisfy that her conduct although harassment, amounted to actual interference with its trade or business.

[48] The plaintiff did not prove on a balance of probabilities that an injury had occurred to the plaintiff's trade. Though this court noted that business associates like Merchantrade severed business relations with the plaintiff after this incident, there is nothing for this court to conclude that it was because of the defendant's action. As testified by PW1, it could be anything that spurred the end of their business relations. The plaintiff's director/PW2 claimed that Merchantrade and PayNet had stopped interacting with the plaintiff's teams after this episode, but he had only assumed that it was because of it. There was no other evidence to corroborate the plaintiff's contention. It may be possible but on a balance of probabilities, this court could not find the defendant having committed the tort of unlawful interference with the plaintiff's business or trade.

THE DEFENDANT'S COUNTERCLAIM

Salary and payment in lieu of notice of termination

[49] On her part, the defendant claimed that the plaintiff had failed to pay her salary and the payment in lieu of notice of termination. She was most certainly entitled to this, but she had yet to return all of the plaintiff's assets which until trial, were still in her possession. This court finds this claim rather unreasonable and agrees with the position of the plaintiff that the payment which it had from the very beginning ever so willing to pay the defendant, would be settled upon the return of the plaintiff's assets. This counterclaim cannot succeed.

Sexual harassment

[50] Through the Federal Court's decision in *Mohd Ridzwan bin Abdul Razak*, sexual harassment has been recognised by our courts. With the Malaysian Code of Practice on the Prevention and Education of Sexual Harassment in the Workplace 1999 (the Code of Practice) and the Employment (Amendment) Act 2012 in mind, the three main elements of sexual harassment are:

(a) the occurrence of conduct that is sexual in nature;

(b) the conduct being unwarranted; and

(c) the conduct is perceived as threatening the victim's ability to perform her job.

[51] The defendant admitted and agreed with the plaintiff that the selected WhatsApp messages from the plaintiff's director and the video call screenshot were personal matters. Though they were beyond working hours, the defendant contended it did not dispense with the plaintiff's duty as an employer to protect its employees from sexual harassment at the workplace. An extraction from *Harry Wong Wei Chen v Petroliam Nasional Bhd (Petronas)* [2021] ILJU 2 that cited *Shahrin Abdul Mutalib v Worldwide Fund for Nature Malaysia* [2019] 2 LNS 2233:

> ... Employer has a duty to protect its employees from any unlawful conduct including sexual harassment and to provide them with a safe and conducive place of work ...

[52] This court takes note that it is consistent with the Code of Practice and the Employment Act 1995 (as amended). This court too takes note that the courts by *Sitt Tatt Berhad v Flora a/p Gnanapragasam & Anor* [2006] 1 MLJ 497 recognised the implied term in the employee's contract of employment when the higher management failed to respond to the complaints by the employees. The defendant submitted that the plaintiff had allowed its senior management, the plaintiff's director, to sexually harass its employee, the defendant.

[53] The defendant argued that the plaintiff had abdicated its duty to protect its employees when it found that the late-night calls/video calls were acceptable on the basis that the defendant was required to work beyond working hours. The plaintiff referred to the fact that both parties admitted that their conversations via WhatsApp applications are personal in nature and not work related. On that basis the plaintiff submitted that there existed no duty of care between the plaintiff and the defendant.

[54] Now the defendant contended that there was sexual harassment by the plaintiff's director towards her and that the plaintiff owed her that duty of care to protect her as its employee from sexual harassment. The defendant referred

to all the messages that contain the usage of profanities, suggestions, and innuendos from the plaintiff's director to the defendant. It submitted that they are sufficiently repetitive to cause emotional distress and annoyance. The defendant stressed that the plaintiff employed the *blame-the-victim* mentality where the plaintiff sought to attack the defendant's credibility faulting instances when she could not remember the contents of certain documents during her testimony at trial.

[55] At this juncture, this court corrects the plaintiff's contention on the duty of care owed to the defendant. The plaintiff as the employer of the defendant has the legal obligation to ensure that the workplace is safe from harassment including sexual harassment. Part XVA of the Employment Act 1955 mandates the plaintiff as the employer to inquire into the complaint of sexual harassment. This means that the plaintiff must provide a mechanism to receive and deal with such complaints as defined in s 2 of the said Act:

> 'sexual harassment' means any unwanted conduct of a sexual nature, whether verbal, nonverbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment

[56] This court turns to the evidence adduced at trial. The evidence of plaintiff's director/PW2 as to the selected WhatsApp messages from the plaintiff's director and the video call screenshot was that they were taken out of context. As can be seen, the defendant's messages were deleted so the messages were not viewed in their entirety. He testified it showed his apparent frustration with the defendant of her constant and frequent usage of profanities that was deemed abusive when she dealt with colleagues, management, and the plaintiff's business associates. As to the video call screenshot, he had explained that it was when the defendant demanded to have a similar outing treated by the plaintiff as the Singaporean team during the Covid pandemic. The defendant told him that she would send across the bill under the name of the plaintiff's director and claim on behalf of the plaintiff. He did however, professed that it was unprofessional of him, but he was sparked by the defendant whom he claimed constantly tiggered for reactions as such.

[57] The time on the selected WhatsApp messages from the plaintiff's director showed that it was done outside office hours. The plaintiff's director testified in cross-examination that as he was based in the United Kingdom it was daytime. When there were the calls, he believed that they were related to critical work issue. He confirmed that he did not initiate any calls. It was always the defendant and that he had returned the missed calls from her — 'The calls were initiated by, usually what happens is the defendant will call me. I would have missed the call, and then you know when I see it, I would return the call. It was not that I initiated a call at the middle of the night for her. It was always,

she will try to reach out to me when, as and when, if she is not getting response from team members as a matter of escalation because she wanted to either you know, escalate to supervisor or superiors to make sure that certain emails or messages are addressed to. But there was there were never conversations or calls initiated by me at a late night time or disturbing her at any point in time'.

[58] The plaintiff's director's evidence that the selected WhatsApp messages were done to be taken out of context because it did not show the calls the defendant had made to him but only his return missed calls to her. He testified that the defendant's messages were purposely deleted (her application setting was set to disappearing messages) and that such incomplete messages would wrongly conclude the context of his messages. He pointed out that the defendant had complained as per the WhatsApp messages that nobody was picking up the phone and had asked the plaintiff's director to pick up her calls. All these were evident from the messages tendered.

[59] When asked during cross-examination as to the personal relationship he had with the defendant, he had explained that 'when an employee has a personal issue or concerns that they are going through, we managers and you know supervisors try to see whether it is impacting their performance, ok we can help them in on their day today' — in his words he confirmed that 'As normal we were friends. Yes. We discussed personal matters. Yes. It is defined as a personal relationship. Yes'. He had also confirmed that the conversations of the selected screenshots on the WhatsApp messages and the video call screenshot were personal in nature and not related to the plaintiff.

[60] Before this court concludes its findings, consideration is made on the evidence adduced by the defendant. The defendant had testified that she was informed by the plaintiff's Human Resources Manager that the latter had an affair with the plaintiff's director and that the defendant's termination was to prevent further friendly communications between the plaintiff's director and the defendant. There was no other evidence at trial to support this contention. This fact was not suggested to the plaintiff's director when he was cross-examined, in fact what was clarified was that the Human Resources Manager was the first employee in Malaysia when the plaintiff started. The plaintiff's director confirmed that he is friends with her as with most of the co-workers who had joined together to build the plaintiff across different countries.

[61] The defendant had also testified that she had disclosed to the plaintiff's director she had borderline personality disorder and that he had acted inappropriately making sexual overtures and remarks. She claimed that she did not highlight this to anyone as she was uncomfortable and was very afraid to lose her job. Not even one of these issues was asked to any of the plaintiff's

witnesses. There was no doctor's report tendered to at the very least, support her contention that she suffers from such a disorder.

[62] The defendant claimed that after she was terminated, she had contacted one Mr Rinosh who was the plaintiff's pre-sales director and that he had agreed that her treatment by the plaintiff's director was unfortunate, but the plaintiff had failed to take steps to protect her rights. This court examined the evidence. The messages that she had shown though did not state that this Mr Rinosh had said any of those things. The defendant had also failed to show that he was a part of the management of the plaintiff.

[63] The defendant had also testified that the plaintiff's director had called her 'at wee hours of the day, demanding video calls and when I did'nt switch on my camera, he would get upset. Many times he called me after work hours and It was not even related to work. If I don't pick up the call, he will continue calling me repeatedly until I either turned off the phone or picked up the call. There's no issue on time difference as Tony Matthew at that material time was in Singapore. He would also use endless profanities as seen in the screenshots tendered here. He has also called me 'cheap' and showed me the middle finger'. The problem with these allegations is also that they were not suggested to the plaintiff's witnesses in particular the director/PW2 himself to verify or hear his explanation, and most importantly to make out her case against the plaintiff. As to the time difference, the court finds that at the time of the selected WhatsApp messages and the video chat screenshot, he was in the United Kingdom as he testified, he had relocated from Singapore since April 2022.

[64] The defendant's contentions on some alleged unethical matters that she was forced to do with the plaintiff's business partners were also not questioned during the plaintiff's case. Thus, they could not be verified. The defendant had further failed to adduce any other evidence to corroborate these claims of hers.

[65] This court recognises the inherent complexities in cases involving sexual harassment. On one hand, complainants often face significant challenges in bringing forth their grievances. This difficulty stems from a variety of factors including the deeply personal and often traumatic nature of the experience, societal stigma, fear of not being believed, and potential professional repercussions. The burden of proof can be daunting, as these cases frequently hinge on nuanced interpersonal interactions, with limited physical evidence or witnesses. On the other hand, defending against such accusations is equally challenging. The accused may confront severe personal and professional consequences, compounded by the public and emotive nature of these allegations. The risk of false accusations, though statistically rare, adds to the complexity of these defences. Consequently, the court must exercise rigorous scrutiny and balanced judgment, ensuring fairness and due process for both

parties. It is a delicate balance to maintain the integrity of the judicial process while being sensitive to the emotional and psychological dimensions of sexual harassment cases.

[66] There were no complaints to the plaintiff on the alleged sexual harassment. Even after the receipt of the termination of her employment, she did not inform the plaintiff's Human Resources Manager of all the allegations that she is now claiming. Her contention had from the very beginning been that there was no show cause process adhered to and thus she was wrongly terminated. She testified that she had filed an appeal with the Industrial Relations Department that cited she was dismissed unlawfully, and the plaintiff had failed to pay her salary. That said email that she had forwarded on 7 July 2022 to the Ministry of Human Resources Malaysia with an image of the plaintiff's director with the video call screenshot labelled simbol lucah' made no mention of any alleged sexual harassment. This would have been her best avenue to lodge such serious complaint but her email was silent on this matter.

[67] She had also testified that during a telephone call with the plaintiff's Human Resources Manager after her dismissal, she had informed the latter that she did not have any relationship with the plaintiff's director other than a working relationship, that she did not find him attractive and was not interested in him. According to the defendant, she had also told the Human Resources Manager that the plaintiff's director was a pervert. In this court's view, it was a reaction of a woman scorned, not a victim of sexual harassment. That email suggested that her motive was to get back at the plaintiff by embarrassing the plaintiff's director to ensure that she gets paid.

[68] This court observed that the defendant used profanities and crude sexual references freely in her communications. Her language was consistently lewd and there did not seem any reservations in her conversation with colleagues or management. From the messages, the defendant commented harshly on her colleagues and had also spewed crude descriptions and innuendos of the sexual kind of her colleagues. Due to the crude and rough language used, the messages will not be reproduced here in this judgment.

[69] This court examined the testimony of the defendant where she confirmed that she had a cordial working relationship with the plaintiff's director. Yet in the next breath she claimed that the plaintiff's director has a fetish where he liked it when she got angry and claimed that 'he began acting inappropriately including making sexual overtures and remarks'. This similar trend of answers she aired when giving evidence in court depicted the hot-and-cold type of contentions. She makes it difficult for the court to accept and believe her story. She exhibited disregard for authority and common courtesy in her mannerism. Nevertheless, her allegation of sexual harassment is

a serious one which warranted careful consideration. This court carried a scrutiny of all the evidence to determine whether there was sexual harassment committed by the plaintiff's director and that the plaintiff breached its duty as their employer.

[70] An observation is made that the defendant's language in her communications is filled with profanities with constant and repeated usage of disgraceful terms. The plaintiff's director likewise seemed to respond in such a manner too. This, the court finds extremely unprofessional. When the plaintiff waved the banner of proper conduct, it is expected to apply the same top-down in the company. Shamefully and this court regards so as they were involved in sales that surely gave them daily practice of the usage of language that are more persuasive and kinder to the ears of the listeners and the eyes of the readers, it seemed like a norm to have had that way of communications between the defendant and the plaintiff's director.

[71] Looking at the relationship, this court finds on a balance of probabilities that their personal one was consensual. The matter seemed to have been on a personal level. It was unprofessional, particularly on the part of the plaintiff's director but on a balance of probabilities it does not seem to equate sexual harassment on the part of the plaintiff's director. There is an absence of any medical report to show signs or consequences of the plaintiff having been through such traumatic episode. There is no evidence to corroborate her claims of mental stress, insomnia, depressive disorders, and anxiety as a result of the plaintiff's director's alleged sexual harassment.

[72] In the circumstances, the defendant's counter claim for sexual harassment against the plaintiff is hereby dismissed.

[73] There is evidence that the defendant was prepared to leave the employment of the plaintiff before her termination. On her claim of loss of earnings — evidence through her cross-examination showed that as of 10 June 2022 the defendant was ready to resign and did not want to stay with the plaintiff — her message stated as follows, although she claimed she did not remember, it was expressly confirmed that she stated:

> U think I want to stay here and rot and die with some of the world weirdest idiots???
>
> U want me to go, take the call and give references. They asked why I'm leaving after a year. I said not suitable industry And told them my current boss thought the same though I've tried my best.

[74] All the printed messages and chats that were bundled in the Common Bundle B though at trial she denied them. This court having observed her

demeanour found her evasive, inconsistent, and sometimes flippant. On a balance of probabilities, she has not succeeded in proving her claim for loss of earnings.

DAMAGES

[75] This court finds only the tort of harassment by the defendant successfully proven on a balance of probabilities. The plaintiff had sought the sum of RM100,000 for damages for this. It is rather unreasonable given that the defendant's actions of harassment were contained to the incidents following the termination of her employment on 20 June 2022. The plaintiff had to cope with the annoyance and embarrassment and having had to control damage by engaging with its employees and business associates. This court notes that the harassment was not over a terribly long period of time. There are also the direction and prohibitory orders of this court that also compensate the plaintiff with a lower amount of damages. This court awarded damages for the tort of harassment committed by the defendant in the sum of RM20,000. The defendant is also ordered to pay costs to the plaintiff. The plaintiff again sought for the sum of RM100,000 but this court opines that RM65,000 is reasonable.

[76] In concluding this judgment, it is imperative to reiterate the courts' stance that sexual harassment constitutes a grievous misconduct, which is intolerable in any form. Such behaviour undermines the fundamental principles of dignity, respect, and equality that are cornerstones of our society and legal system. It is the duty of the court to safeguard the working environment from such transgressions. As such, allegations thereof will be looked upon closely lest the victims be bereft of redress yet on the other side to ensure that there are no false accusation which brings with it the smearing of good name and reputation that would be difficult to untarnished.

[77] A healthy and secure workplace is essential not only for the efficient functioning of our economic systems but also for the mental and emotional well-being of every individual who strives to earn their living. The protection of workers from sexual harassment is not merely a legal obligation but a moral imperative, essential for fostering a culture of respect and safety. This court is committed to upholding these values and ensuring that justice is served, both in letter and spirit, in every case that comes before it.

Order accordingly.

Reported by Nabilah Syahida Abdullah Salleh